

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN QUINTANILLA VASQUEZ, et al.,

Plaintiffs,

v.

LIBRE BY NEXUS, INC.,

Defendant.

Case No. 17-cv-00755 CW

**ORDER FOR CIVIL CONTEMPT
SANCTIONS AGAINST DEFENDANT**

(Re: Dkt. No. 218)

For the reasons set forth in the Court's order granting in part and denying in part Plaintiffs' motion for an order holding Defendant Libre by Nexus, Inc. (LBN) in civil contempt and imposing civil contempt sanctions on LBN, the Court hereby orders as follows:

1. Cash Amounts LBN Owes Under the Settlement Agreement. LBN shall, within ten business days of the date this order is filed, pay the entirety of the cash amounts it owes under the settlement agreement (\$1,590,000), which are now past due, pursuant to the adverse inference that the Court has drawn with respect to LBN's revenues for the purpose of determining its payment schedule for the cash amounts in question. These amounts total \$1,590,000 and are comprised of \$750,00 for the Cash Settlement Fund, \$40,000 for incentive awards for the named plaintiffs, and \$800,000 in attorneys' fees and costs for Class Counsel. For each day that LBN fails to pay the \$1,590,000 at issue by the date specified in this order, LBN shall pay a fine of \$1,000 per day of continued noncompliance, which LBN shall pay to the settlement administrator for the benefit of, and eventual distribution to, members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass.¹

¹ The distribution of any fines collected by the settlement administrator for the benefit of members of the Former and Current Program Participant Payments Subclass and Sponsor

2. Costs of Settlement Administration. Within ten business days of the date this order is filed, LBN shall pay the remainder of the \$80,000 it owes for the costs of settlement administration (\$72,000), with interest to be calculated from August 14, 2021, to the present.² For each day that LBN fails to pay this amount by the date specified in this order, LBN shall pay a fine of \$1,000 per day of continued noncompliance, which LBN shall pay to the settlement administrator for the benefit of, and eventual distribution to, members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass.

3. Attorneys' Fees for Plaintiffs' 2021 Motion to Enforce the Settlement Agreement. Within ten business days of the date this order is filed, LBN shall pay the \$34,142.60 it owes for Class Counsel's attorneys' fees and costs in connection with their 2021 enforcement motion, with interest to be calculated from July 30, 2021, to the present. These amounts shall be paid into a trust held by the settlement administrator and shall not be distributed to Class Counsel until cash distributions pursuant to the settlement agreement and the Court's orders are first made to members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass. For each day that LBN fails to pay the \$34,142.60 amount plus interest as indicated herein, LBN shall pay a fine of \$1,000 per day of continued noncompliance, which LBN shall pay to the settlement administrator for the benefit of, and eventual distribution to, members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass.

4. Timely and In Full Payment Discount, Consecutive Payment Discount, Total Payment Cap, and Debt Relief Fund. No later than five business days from the date this order is filed, Class Counsel shall provide LBN with the names of fifty members of the Current Program Participant Subclass who are eligible to receive, and should have received, respectively, the Timely and In Full Payment Discount, Consecutive Payment Discount, Total Payment Cap, and

Payments Subclasses pursuant to this order shall be effectuated pursuant to the distribution plan set forth in the settlement agreement for the Cash Settlement Fund.

² Interest, for the purpose of complying with this order, shall be calculated "at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a). Interest shall be computed daily and shall be compounded annually. 28 U.S.C. § 1961(b).

1 Debt Relief Fund credits pursuant to the terms of the settlement agreement. Within five business
2 days of receiving these names, LBN shall provide to Class Counsel billing records and other
3 documents sufficient to show that it has implemented the Timely and In Full Payment Discount,
4 Consecutive Payment Discount, Total Payment Cap, and Debt Relief Fund credits with respect to
5 the fifty people selected by Class Counsel for each category of discounts, caps, and credits, as well
6 as billing records and other documents sufficient to show the date on which LBN implemented the
7 discounts, caps, and credits in question. The billing records and documents that LBN shall
8 produce to Class Counsel shall be accompanied by a declaration signed under penalty of perjury by
9 LBN's principals that authenticates the records and documents and attests to the truthfulness and
10 accuracy of their contents.

11 If, upon their receipt and review of the billing records and documents that LBN must
12 produce to them, Class Counsel believe in good faith that LBN has failed to apply the Timely and
13 In Full Payment Discount, Consecutive Payment Discount, Total Payment Cap, or Debt Relief
14 Fund credits as required under the terms of the settlement agreement, then Class Counsel may file
15 a supplemental motion for civil contempt sanctions. LBN may file a response to Plaintiffs'
16 supplemental motion for civil contempt sanctions within fourteen days of the date that it is filed,
17 and Plaintiffs may file a reply within seven days thereafter. Once the briefing is completed, the
18 Court may rule on the supplemental motion on the papers or may refer the matter to a magistrate
19 judge for resolution.

20 Until LBN has demonstrated its compliance with the terms of the settlement agreement
21 requiring it to implement the Timely and In Full Payment Discount, Consecutive Payment
22 Discount, Total Payment Cap, and Debt Relief Fund credits, as described in this order, LBN shall
23 not refer to a third-party collections agency any alleged debt owed by a member of the Current
24 Program Participant Subclass who was eligible to receive the Timely and In Full Payment
25 Discount, Consecutive Payment Discount, Total Payment Cap, or Debt Relief Fund credits under
26 the terms of the settlement agreement. The Court will lift this prohibition once LBN establishes
27 that it is in compliance with the terms of the settlement agreement requiring it to implement the
28 Timely and In Full Payment Discount, Consecutive Payment Discount, Total Payment Cap, and

Debt Relief Fund credits, as described in this order. While the prohibition is in effect, LBN shall be subject to a fine of \$1,000 per day of noncompliance with the prohibition, which LBN shall pay to the settlement administrator for the benefit of, and eventual distribution to, members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass.

5. Attorneys' Fees for Plaintiffs' Motion for an Order Holding LBN in Civil Contempt and Imposing Civil Contempt Sanctions. Within ten business days of the date that this order is filed, LBN shall pay \$53,021.60 for the attorneys' fees that Class Counsel incurred in connection with their motion for an order holding LBN in civil contempt and imposing civil contempt sanctions. LBN shall pay this amount into a trust held by the settlement administrator and the amount shall not be distributed to Class Counsel until cash distributions pursuant to the settlement agreement and the Court's orders are made first to members of the Former and Current Program Participant Payments Subclass and Sponsor Payments Subclass.

6. Any fine of \$1,000 per day that LBN incurs for noncompliance, as set forth in this order, shall be cumulative (i.e., each \$1,000 per-day fine shall be per *each* instance of noncompliance with respect to *each* of the subject matters regarding which the Court has separately ordered LBN to take certain actions, as described above) and shall be in addition to (1) any other judgment, fine, or fee imposed against LBN in this action, and (2) any amounts that LBN is obligated to pay pursuant to the terms of the settlement agreement, the Final Approval Order, and any other order previously issued by the Court.

IT IS SO ORDERED.

Dated: 10/3/2022



CLAUDIA WILKEN
United States District Judge